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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Jo-Ann Stores, LLC., an Ohio Limited
Liability Company

No.

Plaintiff,

v.

SD-Sahuarita Properties, LLC, an Arizona
Limited Liability Company,

Defendants.

COMPLAINT

**(Declaratory Relief; Breach of
Contract)**

Plaintiff Jo-Ann Stores, LLC (“Jo-Ann”) for its complaint against
defendant SD-Sahuarita Properties, LLC (“Sahuarita”) alleges as follows:

I.

THE PARTIES

1. Jo-Ann is an Ohio LLC with its principal place of business located in
Hudson, Ohio. Jo-Ann operates fabric and craft stores with locations across the United
States, including several stores in Arizona.

2. Sahuarita is an Arizona limited liability company with its principal place of
business located in Arizona. Sahuarita is the current owner of real property located at
18705-18805 South I-19 Frontage Road, Sahuarita, Arizona (the “Shopping Center”).

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II.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the litigants are citizens of different states and the amount in controversy exceeds the sum of \$75,000.

2. This Court has subject matter jurisdiction over this claim for declaratory judgment pursuant to 28 U.S.C. § 2201 and Rule 57, Fed. R. Civ. P., as this is a case of actual controversy within the Court's jurisdiction.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because Sahuarita's registered address is within this District.

III.

FACTUAL COMMON TO ALL CLAIMS

4. Pursuant to a Lease made as of December 10, 2012 ("Original Lease"), Jo-Ann, as Tenant, leased retail space consisting of approximately 13,043 square feet of Gross Leasable Area from Sun Life Assurance Company of Canada (U.S.), as original landlord, at the Shopping Center.

5. Pursuant to that certain Assignment and Assumption of Leases and Security Deposits dated July 7, 2017, Sun Life Assurance assigned its rights as Landlord under the Lease to Sahuarita.

6. Pursuant to a First Amendment to Lease Agreement made as of May 4, 2020 (the "First Amendment"), Jo-Ann and Sahuarita agreed to amend the Original Lease, including to extend the term of the Lease through January 31, 2025. Hereafter, the Original Lease and First Amendment are referred to collectively as the "Lease").

7. The Lease, Section 5, requires Jo-Ann to pay Fixed Minimum Rent in monthly installments, in advance on or before the first day of each month during the term of the Lease in the amounts specified in the Lease.

8. The Lease, Section 14, titled "Use Violation," grants certain exclusivity rights to Jo-Ann, providing that, if any portion of the Shopping Center is used or occupied

1 for the “Protected Use,” or if any sale area within the Shopping Center is designated for
2 the Protected Use, a “Use Violation” would occur.

3 9. In the event a Use Violation occurs, Jo-Ann, among other remedies would
4 be obligated only “to pay Substitute Rent in lieu of Fixed Minimum Rent until such Use
5 Violation ceases.”

6 10. The Lease, Section 2(s), defines a “Protected Use” as follows:

7 [T]he sale of fabrics of all kinds, goods sold by the yard, upholstery
8 materials, scrapbooks and scrapbooking supplies and materials, patterns,
9 yarns and knitting supplies, needlepoint, macramé, artificial flowers and
10 accessories, arts and crafts materials and supplies, all types of notions,
11 custom framing, framed artwork, sewing machines, sewing machine
furniture, products, accessories and services directly related to all of the
foregoing, and other items and services customarily offered for sale by a
fabric and/or arts and crafts store.

12 11. The Lease, Section 2(aa), defines “Substitute Rent” as “50% of the then-
13 current Fixed Minimum Rent.”

14 12. The Lease, Section 14(g) requires Sahuarita to use “diligent, good faith,
15 commercially reasonable efforts to cure any breach of violation” of Section 14,
16 “including, without limitation, seeking and diligently prosecuting all available legal and
equitable remedies to compel or otherwise cause cessation of the Use Violation.”

17 13. The Lease, Section 50, provides that “[a]ll actions or claims by Tenant for
18 recovery of excess payments of Rent shall be barred three years after the end of each
19 Lease Year or Partial Lease Year.”

20 14. In the spring of 2023, Jo-Ann’s corporate office performed an audit of the
21 store at the Shopping Center and learned that, in 2018, Sahuarita began leasing space
22 within the Shopping Center to Cathey’s Sewing and Vacuum (“Cathey’s”).

23 15. Jo-Ann learned that Cathey’s primary business included the sale of sewing
24 machines and related products and accessories.

25 16. The sale of sewing machines and related products and accessories is a
26 Protected Use pursuant to the Lease, Section 1(s); accordingly, Cathey’s sale of these
items constitutes a Use Violation.

1 continue to pay and the Substitute Rent Jo-Ann should pay from January 2024 and the
2 date that Judgment is entered in this action, in an amount to be proven at trial.

3 37. Jo-Ann is entitled to recover its reasonable attorneys' fees and costs
4 pursuant to the Lease, Section 58.

5 **WHEREFORE** Plaintiff requests that the Court grant the following relief:

6 A. A judgment declaring that Jo-Ann is and has been since 2018, entitled to
7 pay Substitute Rent under the Lease, shall be entitled to continue paying Substitute Rent
8 unless and until the Use Violation is cured.

9 B. Compensatory damages for Sahuarita's breach of the Lease equal to the
10 difference between the Fixed Minimum Rent Jo-Ann's has paid and the Substitute Rent
11 Jo-Ann's was and has been entitled to pay since February 1, 2020, through the date
12 Judgment is entered, in an amount to be proven at trial, but in no event less than
13 \$222,539.36.

14 C. An award of Jo-Ann's reasonable attorneys' fees and costs incurred in
15 prosecuting this action; and

16 D. Such other relief that the Court deems appropriate.

17 **DATED** this 13th day of December, 2023.

18 **DICKINSON WRIGHT PLLC**

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